IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit: 2134   Examiner: Brown, Christopher J.

Serial No. 09/515,809   Filed: February 29, 2000

In Re Application of: Steve Trong

For: METHOD FOR CHECKPOINTING AND RECONSTRUCTING SEPARATE
       BUT INTERRELATED DATA

BRIEF ON APPEAL

Director of Patents
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Sirs:

This is an Brief on Appeal for consideration by the Board of Patent Appeals and

Interferences ("*Board*") of the Final Office Action, dated April 10, 2007, rejecting all of

the claims of the present application. A timely Notice of Appeal was filed on July 16,

2007.

TABLE OF CONTENTS

I.   REAL PARTY IN INTEREST

The only real party in interest regarding the present application is Cisco Technology, Inc., a California Corporation, assignee of the present application.

II.   RELATED APPEALS AND INTERFERENCES

To the best of Appellants' knowledge, there are no appeals or interferences that will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

III.   STATUS OF CLAIMS

Claims 15-26 were pending in the application. Claims 1-14 had been cancelled. Claims 15-17, 19-21, 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Westberg in U.S. Patent No. 6,041,054 ("*Westberg*"). Claims 18, 22, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Westberg in view of Jade in U.S. Patent No. 6,061,797 ("*Jade*").

IV.   STATUS OF AMENDMENTS

There were no amendments filed subsequent to the Final Office Action.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed towards a method for storing data relating to a connection through a routing system in a checkpoint server (Claim 15); a checkpoint server for storing data for a connection (Claim 19); and an apparatus for storing connection information for a connection for a connection for a routing system (Claim 23)

The present invention is directed towards a method (Claim 15) for storing data relating to a connection through a routing system (FIG. 2) in a checkpoint server (FIGs 5A and 5B; P 7 L 14; P 11 L 5 through P 13 L 4) comprising: receiving connection information for a connection from a module in a routing system (FIG. 2; P 7 LL 14-15; P 14 LL 10-15) wherein said connection information is information needed by a module to support said connection (P 15 LL 5-13); determining a connection identifier for said connection responsive to receiving said connection information (FIG. 6 #602; P 14 L 16 through P 15 L 4); embedding said connection identifier into said connection information (FIG. 6 #604; P 12 L 12 through P 13 L 4; Initial Claims 1, 6, 9 and 13); and storing said connection information with said connection identifier into a space in said memory (FIG. 6 #604; P 7 LL 14-15; P 12 LL 5-15; P 15 LL 5-13).

The present invention is further directed towards a checkpoint server (FIGs 5A and 5B; P 7 L 14; P 11 L 5 through P 13 L 4) for storing data for a connection (Claim 19) comprising circuitry configured to implement the method steps in Claim 1 described above and incorporated herein by reference.

The present invention is further directed towards an apparatus for storing connection information for a connection for a routing system (Claim 23) comprising means for implementing the method steps in Claim 1 described above and incorporated herein by reference.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Office Action, dated April 10, 2007, claims 15-17, 19-21, 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Westberg in U.S. Patent No. 6,041,054 ("*Westberg*") and Claims 18, 22, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Westberg in view of Jade in U.S. Patent No. 6,061,797 ("*Jade*"). Applicant respectfully submits that not all elements in the rejected independent claims are found in Westberg, and therefore, these claims cannot be anticipated by that prior art reference. Furthermore, Applicant respectfully submits that the added elements in claims 18, 22, and 26 cannot be found in the combination of Westberg and Jade prior art references, and therefore these claims are not obvious in view of this combination.

VII. ARGUMENT

1. The 35 U.S.C. § 102(e) rejection

In the Final Office Action, dated April 10, 2007, Claims 15-17, 19-21, 23-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by Westberg in U.S. Patent No. 6,041,054 ("*Westberg*"). Applicant respectively traverses this rejection.

The Examiner rejected independent Claim 15 under 35 U. S.C. §102(e) as being anticipated by Westberg. To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements "*arranged as in the claim.*" *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: "*That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.*" *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). Furthermore, **missing elements** may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985). Finally, in order to support an anticipation rejection based on **inherency**, an Examiner must provide factual and technical grounds establishing that the inherent feature necessarily flows from the

teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int. 1990); *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) (holding that inherency must flow as a necessary conclusion from the prior art, not simply a possible one).

Claim 15 recites *"receiving connection information for a connection from a module in a routing system wherein said connection information is information needed by a module to support said connection."* Westberg does not teach connection information as recited in amended claim. Instead, Westberg teaches a compression method in which an identifier is placed inside a packet instead of the source address and destination address. See Col. 6, lines 4-21. The source and destination addresses are then stored in a look-up table. See Col. 7, lines 10-14. When the identifier is read by a receiving system, the receiving system then looks for addresses using the identifier in the packet. Col. 7, lines 13-17. However, none of this describes connection information that is information needed by a module to support the connection. The *"connection information"* in Westberg is actual data, i.e. the source and destination address that is transmitted over a connection. Thus, the data cited in Westberg is not connection information as recited in Claim 15.

Furthermore, the claim requires *"embedding said connection identifier into said connection information"*. In Westberg, the connection identifier replaces connection information, and is not embedded into it.

Independent Claim 19 claims a *"checkpoint server"* that comprises circuitry for implementing the method in Claim 1. Independent Claim 23 claims an apparatus that

comprises means for implementing the method steps of Claim 1. The arguments for Claim 1 are therefore incorporated herein by reference for these other two independent claims.

Therefore, Applicant respectfully argues that a prima facie case of anticipation has not been made for these three independent claims, that the rejection of these claims is improper, and requests that the rejection of these claims be removed and the claims allowed. The remainder of the claims are dependent upon these three independent claims, and should be allowable for the same reasons.

Without particularly pointing out where a cited reference anticipates the limitations of a claim, a 35 U.S.C. § 102(e) rejection cannot be maintained.

2.   The 35 U.S.C. § 103(a) rejection

In the Final Office Action, dated April 10, 2007, Claims 18, 22, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Westberg in view of Jade. Applicant respectively traverses this rejection.

MPEP § 2142 states that: "The legal concept of prima facie obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process. See *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976); *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972); *In re Saunders*, 444 F.2d 599, 170 USPQ 213 (CCPA 1971); *In re Tiffin*, 443 F.2d 394, 170 USPQ 88 (CCPA 1971), *amended*, 448

F.2d 791, 171 USPQ 294 (CCPA 1971); *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968)".

MPEP § 2143(A) requires that *"To reject a claim based on this rationale* (i.e. A. <u>Combining Prior Art Elements According to Known Methods To Yield Predictable Results</u>), *Office personnel must resolve the Graham factual inquiries. Then, Office personnel must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference"*.

Thus, the burden of going forward is on the examiner to make a prima facie case of obviousness, and that requires *"a finding that the prior art included each element claimed, although not necessarily in a single prior art reference"*. These claims are dependent upon the claims rejected as anticipated by Westberg and argued above. That argument is incorporated herein by reference. The claimed elements that are missing from the anticipation rejection above are missing from the combination of Westberg and Jade.

Applicant therefore respectfully argues that since these elements are missing from the combined references cited, a prima facie case of obviousness has not been made, that this rejection is improper, and requests that the rejection of these claims be removed and the claims allowed.

CONCLUSION

It is respectfully urged that the Examiner has erred in the rejection Claims 15-17, 19-21, 23-25 under 35 U.S.C. § 102(e). The cited references do not teach each and every element of the presently claimed application. Therefore, the Examiner has failed to make a prima facie case of lack of novelty as required by 35 U.S.C. § 102(e).

It is further urged that the Examiner has erred in the rejection of Claims 18, 22, and 26 under 35 U.S.C. § 103(a). The cited references combined do not teach each and every element of the presently claimed application. Therefore, the Examiner has failed to make a prima facie case of obviousness as required by 35 U.S.C. § 103(a).

Accordingly, in view of the foregoing comments and arguments, it is respectfully requested that the Board reverses the Examiner's rejection and allows Claims 15-26 in this application.

Respectfully submitted,
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VIII. CLAIMS APPENDIX

Claims 1-14 (Cancelled)

15. (Previously Presented) A method for storing data relating to a connection through a routing system in a checkpoint server comprising:

receiving connection information for a connection from a module in a routing system wherein said connection information is information needed by a module to support said connection;

determining a connection identifier for said connection responsive to receiving said connection information;

embedding said connection identifier into said connection information; and

storing said connection information with said connection identifier into a space in said memory.

16. (Previously Presented) The method of claim 15 further comprising:

detecting a new connection; and

generating a new connection identifier responsive to detecting said new connection.

17. (Previously Presented) The method of claim 16 wherein said step of generating said new connection identifier comprises combining a source address and a destination address of said new connection.

18.   (Previously Presented) The method of claim 15 further comprising:

receiving a request for data for said connection from a firewall application;

determining said connection identifier for said connection; and

retrieving all data stored in said memory that includes said connection identifier.

19.   (Previously Presented) A checkpoint server for storing data for a connection comprising:

circuitry configured to receive connection information for a connection from a module in a routing system wherein said connection information is information needed by a module to support said connection;

circuitry configured to determine a connection identifier for said connection responsive to receiving said connection information;

circuitry configured to embed said connection identifier into said connection information; and

circuitry configured to store said connection information with said connection identifier into a space in said memory.

20.   (Previously Presented) The server of claim 19 further comprising:

circuitry configured to detect a new connection; and

circuitry configured to generate a new connection identifier responsive to detecting said new connection.

21. (Previously Presented) The server of claim 20 wherein said means of generating said new connection identifier comprises circuitry configured to combine a source address and a destination address of said new connection.

22. (Previously Presented) The server of claim 18 further comprising:

circuitry configured to receive a request for data for said connection from a firewall application;

circuitry configured to determine said connection identifier for said connection; and

circuitry configured to retrieve all data stored in said memory that includes said connection identifier.

23. (Previously Presented) An apparatus for storing connection information for a connection for a routing system comprising:

means for receiving connection information for a connection from a module in a routing system wherein said connection information is information needed by a module to support said connection;

means for determining a connection identifier for said connection responsive to receiving said connection information;

means for embedding said connection identifier into said connection information; and

means for storing said connection information with said connection identifier into a space in said memory.

13

24.   (Previously Presented) The apparatus of claim 23 further comprising:

means for detecting a new connection; and

means for generating a new connection identifier responsive to detecting said new

connection.

25.   (Previously Presented) The apparatus of claim 24 wherein said means for

generating said new connection identifier comprises means for combining a source

address and a destination address of said new connection.

26.   (Previously Presented) The apparatus of claim 23 further comprising:

means for receiving a request for data for said connection from a firewall

application;

means for determining said connection identifier for said connection; and

means for retrieving all data stored in said memory that includes said connection

identifier.

IX.   __EVIDENCE APPENDIX__

Evidence limited to cited cases.

X.   __RELATED PROCEEDINGS APPENDIX__.

None